

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ABSOLEM THOMAS,

Plaintiff,

v.

Case No. 2:08-cv-205
HON. R. ALLAN EDGAR

DAVID BERGH, et. al.,

Defendants.

MEMORANDUM AND ORDER

When plaintiff Absolem Thomas filed this federal civil rights action under 42 U.S.C. § 1983, he was a Michigan state prisoner in the custody of the Michigan Department of Corrections (MDOC). Plaintiff was subsequently discharged from MDOC supervision in January 2009. Plaintiff Thomas claims that while he was a Michigan state prisoner, the defendants who are MDOC employees violated his plaintiff's rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc-1 - 2000cc-5, and his right to freedom of religion guaranteed by the First Amendment to the United States Constitution.

Defendants David Bergh, Gerald Riley, N. Hoffman, and Michael Martin moved for summary judgment pursuant to Fed. R. Civ. P. 56. [Doc. No. 22]. Plaintiff did not timely file a response. The Court deems plaintiff to have waived opposition to the summary judgment motion.

The motion for summary judgment was referred to Magistrate Judge Timothy P. Greeley for

a report and recommendation. On August 21, 2009, Magistrate Judge Greeley submitted his report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1. [Doc. No. 29]. It is recommended that the defendants' motion for summary judgment be granted and that the plaintiff's entire complaint be dismissed with prejudice as to all claims against all defendants.

Plaintiff Thomas has not timely filed any objections to the report and recommendation. After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b). Accordingly, the defendants' motion for summary judgment [Doc. No. 22] is **GRANTED** pursuant to Fed. R. Civ. P. 56. The plaintiff's entire complaint shall be **DISMISSED WITH PREJUDICE** as to all claims against all defendants.

For the same reasons expressed in the report and recommendation, the Court further finds that any appeal of this action would not be taken in good. *McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). Pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(4)(B), the Court shall certify that any appeal by plaintiff Thomas from the judgment of this Court would not be taken in good faith. Any application by plaintiff for leave to proceed on appeal *in forma pauperis* shall be denied.

In the event that the plaintiff seeks to appeal this decision to the Court of Appeals for the Sixth Circuit, this District Court will assess and require plaintiff to pay the standard \$455 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis* by the "three strikes" rule in 28 U.S.C. 1915(g). If he is barred by the "three strikes" rule in 28 U.S.C. 1915(g), then plaintiff will be required to pay the \$455 appellate filing fee in one lump sum.

A separate judgment will be entered.

SO ORDERED

Dated: September 22, 2009.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE